

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**DEVERICK SCOTT
ADC #131042**

PLAINTIFF

v.

CASE NO. 5:19-CV-00079 BSM

WENDY KELLEY, et al.

DEFENDANTS

ORDER

After *de novo* review of the record, including Deverick Scott's objections, United States Magistrate Judge Patricia S. Harris's partial recommended disposition [Doc. No. 7] is adopted except as to the suggestion that the act of "dashing" (*i.e.*, throwing urine at someone) cannot be considered a "risk of serious harm" and, thus, cannot give rise to an actionable constitutional claim. *See Mero v. Independence County Jail*, 2014 WL 1168987, at *3 (E.D. Ark. March 21, 2014) ("being doused repeatedly with urine over the course of several days is not 'harmless'"). Nevertheless, unlike the circumstances in *Mero*, the complaint establishes that Scott instigated these events and that the dashing occurred only twice. For these reasons and for the reasons provided in the recommend disposition, Scott may proceed with his First Amendment retaliation claim against James Plummer. All other claims are dismissed without prejudice.

IT IS SO ORDERED this 17th day of May 2019.


UNITED STATES DISTRICT JUDGE